

## The morality of freedom and the patriarchal bargain

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clearer about how they relate. There may be all kinds of pragmatic reasons against introducing new laws or policy directives that have little or nothing to do with normative issues. It may be, for example, that legislating against a particular practice drives it underground and makes it harder than ever to detect; it may be (as in the case discussed here) that it proves impossible to restrict a practice without restricting other practices no one intended to curtail; or it may just be that the costs of policing a new law take away resources from policing an older one. It helps to know whether the objections are normative or pragmatic, if only because these require different kinds of solution; and my own preference is to separate out the issues that need to be addressed in determining what justice requires from those to be addressed in determining which policy mechanisms will best achieve this. In her otherwise compelling treatment of the issue of sex-selective abortion, Saharso mixes up the 'moral' and 'non-moral' considerations in ways that make this more difficult to do. Oddly, the effect is that she ends up with a more exclusively pragmatic argument than seemed to be implied at the start.

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## The morality of freedom and the patriarchal bargain

*A response to Sawitri Saharso*

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One of the important and welcome aims of Saharso's sensitive treatment of sex-selective abortion (SSA) is to question the oppositions often assumed in political theory between 'tradition' and 'modernity', and between

'liberal' and 'illiberal' cultures. On Saharso's reading, SSA does not signal a conflict between gender equality and cultural diversity. Rather, it exemplifies how gender oppression, culture, and modernity can work together. While I am in sympathy both with this particular point and with Saharso's project as a whole, I am doubtful that her moral-theoretical perspective delivers the conclusions that it claims to generate, or at least that it generates them for the right reasons. I also have broader concerns about its utility as an ethical standpoint in issues pertaining to minority politics. Saharso claims that, even if SSA is morally wrong, this does not mean that the women who choose it are irrational; and neither does it entail that access to abortion should be legally restricted. The different strands of her argument leave me uneasy about the conceptual relationship that she assumes between women's freedom and the question of morality (that is, both the morality of legal intervention and the morality of women's choices). Briefly, my concern is that, where women act in the context of deeply patriarchal social structures, contextual morality as it is presented here does not supply a sufficiently determinate ethical basis for the protection of women's free agency.

### CONTEXTUAL MORALITY: CONSEQUENTIALIST OR INTRINSICALIST?

I would like to begin by clarifying the moral basis of 'contextual morality'. This is important because it appears counter-intuitive that 'non-moral considerations' should (co-)determine the right answer in cultural practices. While moral considerations are usually those relating to interpersonal standards of justice, in 'contextual morality' it seems that the determinant is pragmatic desire to maximize the *overall* well-being of women as a social group. Given the limited extent to which SSA occurs in the Netherlands, and therefore the limited number of women who are harmed by this practice, Saharso argues that *on balance* strong intervention into women's reproductive freedom is unjustified. She appeals to Carens (2000) as a fellow proponent of a 'contextual' approach. However, while Carens does urge political philosophers to attend to 'context', this is because he believes that certain contextual issues might help policy-makers to better implement principles such as the equality and liberty of persons (2000: 1). Carens' 'contextualism' therefore constitutes a *principled* moral position, whereas Saharso's appears to be pragmatic and utilitarian.

The consequentialist perspective that she generates on SSA appears (paradoxically) overly simplistic, or even rather harsh. It might be too simplistic in assuming that the right answer in ethically problematic debates becomes clear from their contextual features. This is in spite of the fact,

which Saharso recognizes explicitly, that these different considerations may leave us in a fundamental moral dilemma: there may be no answer that comes without high moral cost. Alternatively, the solution that contextual morality proposes in regard to SSA might seem too harsh in the sense that the approach advocates no change to the existing 'weak' restrictions on pre-natal diagnostic (PND) testing in the Netherlands. However, such a position offers little or no protection to a woman whose cultural norms and wider life-conditions combine to pressurize her into 'choosing' SSA. It is unclear why paying attention to context entails that the basic human interests of a few women – perhaps those of minority cultures – are less worthy ethically than the good of preserving women's general reproductive rights. In essence, the difficulty is that in seeking to maximize women's overall freedom, contextual morality does not enquire into the social conditions under which particular women make, or fail to make, effective use of those freedoms. The paradoxical result is that, while women are treated equally (that is, in the same way), the apparent egalitarianism of this consequentialist position trades precariously upon the presumed status of all women as equally self-responsible, autonomous moral agents.<sup>1</sup>

The matter is no easier if we search within contextual morality for an intrinsic, Kantian respect for the moral dignity of women of all cultural backgrounds. Saharso is rightly concerned that legislation, whether on abortion or on PND, might not ultimately protect diverse women's agency. This is not only because such legislation is paternalistic with regard to the majority of women, but also because it is *ineffective* in the case of the minority. Therefore, she claims, in India as in the Netherlands, social initiatives are needed to address the systemic abuse of some women's moral rights. While Saharso's claim in this regard appears convincing, we should notice that her main argument justifying *stronger* PND legislation in India is that women's 'exit-options' are more limited in the Subcontinent than in the Netherlands. In Saharso's view this consideration renders Indian women less 'free'. It is true that the previous absence of strict PND legislation had particularly left poorer Indian women open to exploitation by those who administer sex-determinative testing such as amniocentesis and ultrasound under clinically unsafe conditions (Ramamanna and Bambawale, 1980). Nonetheless, it is not clear that such exploitation would be eradicated by the existence of women's 'exit-options'. At a general level it is problematic to assume that a person's capacity to exit from their culture is the measure of their real freedom; and it is not clear how an individual can 'exit' from her inherited culture without incurring a disproportionate emotional personal cost. Ultimately, the use of 'exit-options' to sustain a moral distinction between a person's freedom and unfreedom trades upon an untenable dichotomy between her cultural context and her free agency.

An analysis of both the consequentialist and Kantian readings, then, suggests that 'contextual morality' reaches its conclusions on SSA for the wrong reasons. Each reading exposes a problematic narrative within 'contextual morality' regarding the relationship between women's freedom and their wider context of choice. In fact, both readings tend to expose Saharso's presupposition of an agent whose actions are curiously *dislocated* from her cultural and material context. It is, however, exactly the assumption of the self-determining, self-responsible agent that should be questioned when thinking about the predicament of a woman who chooses SSA (Weiss, 1995).

### **'MORAL MISTAKES' AND THE PATRIARCHAL BARGAIN**

Saharso is worried about the strong paternalism involved in regulating women's freedom to make choices that are antithetical to 'popular' (western, liberal) morality. She thus defends women's rights to act for their own culturally specific reasons. However, against Saharso, it seems to me that attention to the context in which some women choose SSA justifies a more strongly interventionist state than she recommends. This is because, in context, SSA does *not* constitute an immoral but free choice, as Saharso believes. It is worth examining why. While Saharso convincingly emphasizes the distinction between external autonomy ('acting freely in the world') and internal, 'intrapsychic' autonomy, this distinction does not easily support her view that if a woman has internal reasons for choosing SSA, one can therefore presume that her choice is free. I agree that, if a woman fears for her marriage and even her life, and on that basis chooses SSA, her decision is neither random nor capricious; rather, it is instrumentally rational. It would be imperialistic to assume that the woman is a mere 'cultural dupe'. The woman might have cultural reasons for preferring male sons, reasons which are ultimate and compelling *for her* in her situation. However, women can surely be rational and unfree at the same time. Kandiyotti (1988) coined the term 'patriarchal bargain' to describe how women 'strategize' when confronted with severe constraints in patriarchal societies. On this view, a woman's option for SSA may constitute the most rational and even most empowering decision that she could possibly make. By choosing to abort a female foetus she addresses the problem of gender inequality directly, not only by protecting herself from a loss of social status within her community, but also by saving her unborn child from a life of sexual subordination.

While SSA could constitute a rational, empowering and thus a *moral* choice, the ethical problem is whether such a choice is genuinely *free*. Saharso, by contrast, suggests that the difficulty is that, while SSA is

'immoral' (since it expresses norms of gender inequality), nonetheless we should separate this consideration from the woman's freedom to choose. In so doing, however, she relies on a heavily overdrawn public-private dichotomy. While 'political' liberals might insist on this distinction, feminist thinkers often insist with good reason that norms in the 'private' or cultural sphere might seriously limit a woman's freedom. This problem seems acute, since SSA is directly tied to community beliefs that may make it appear to a woman '*the only viable*' option (Weiss, 1995: 202). I share with Saharso a deep resistance to the notion that, if a woman acts for reasons that differ from those of the majoritarian culture, her standing as a moral being may be questioned. I nonetheless believe that Saharso's use of a public-private distinction sidesteps the causal relation between the woman's decision and her wider cultural and social context. Related questions arise with regard to practices such as widow-immolation, which women sometimes appear to choose autonomously. One might argue that since the effects of widow-immolation are physiologically extreme (insofar as the practice results in death or serious disability), the practice differs essentially from SSA. However, both practices raise similar questions regarding women's effective freedom where they are constrained to 'bargain' with patriarchal structures. It is unclear how contextual morality responds to the harder cases. Weiss (1995) is correct to maintain that women do not make *immoral choices* in such situations. Rather, they make a *moral mistake*. For example, a woman might 'choose' SSA in good faith, in the sense that the elimination of a female foetus represents her genuine attempt to contain the conflicts generated by patriarchy. However, she makes a mistake because the choice is not made freely, and neither is it liberatory in its outcomes. The woman's participation in the practice results in reinforcing the very conditions of female subordination which gave rise to the conflict (Weiss, 1995: 297). The problem with widow-immolation *and* SSA is, then, that they sustain the conditions of unfreedom that preclude a renegotiation of the woman's interests and community norms. The more difficult question is, therefore: if certain women do not choose SSA freely, can their unfreedom be explained by the content of their culture's moral norms?

I learned a great deal from Saharso's detailed exploration of SSA. Contextualism is compelling precisely because of the dissatisfaction that feminists, amongst others, have expressed with the abstract disembodiment of much modern ethical reasoning. While human beings surely always act within historically specific frameworks (MacIntyre, 1985), I am nonetheless concerned that *this* contextualism might not provide the ethical ground for fostering minority women's effective freedom in the context of the patriarchal structures in which they are embedded.

## Notes

- 1 The argument also seems to be counter-intuitive on 'contextualist' grounds themselves. The appeal to maximizing overall outcomes complicates any justification for the special protection of minorities, because, presumably, minority interests are (quantitatively) outweighed by those of the majority on any given issue.

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## Sex-selective abortion

*A reply*

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Sex-selective abortion (SSA) is a subject that raises troubling questions about multiculturalism, gender and autonomy that defies a definitive answer. My article was a step towards addressing this complex issue. I am grateful therefore to my discussants for their thoughtful comments on my article.

Before I respond to what I take to be their major criticisms, let me correct a factual misunderstanding. The Netherlands does not have, as Miriam Ticktin thinks, a policy of free access to pre-natal diagnostics (PND), nor am I arguing that it should have.

Ticktin claims that I am taking a culturalistic perspective that would prevent me from seeing what is really at stake. SSA is a practice that, according to her, is shaped by state violence against and discrimination of